

**BINGHAM COUNTY PLANNING & ZONING COMMISSION**

**REGARDING THE APPLICATION OF:**

Remand by the Board of County Commissioners for  
Additional Fact-Finding regarding Basalt Bar Estates  
Property Owners/Applicants: Daniel and Catherin Wachs,  
Brian and Donna Aschliman and Jay and Lee Ann Wells  
Developers: Daniel and Catherin Wachs

**REASON AND DECISION  
RE: BOARD OF COUNTY  
COMMISSIONERS REMAND  
January 11, 2023**

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Requested Action: The Planning & Zoning Commission held a Remand Public Hearing at the request of the Board of County Commissioners, who in an open meeting on November 1, 2022, concluded additional fact finding was necessary to make a decision on the Basalt Bar Estates Subdivision Application and followed the procedures set forth in Bingham County Code Section 10-3-7. The additional information sought by the Board of Commissioners included:

1. Identifying the community septic system that is proposed on Lots 2 and 3;
2. Idaho Public Health Department's position on the community septic system that is proposed on Lots 2 and 3;
3. Discussion to determine whether the definition of *Community Sewage Disposal System* contained in Bingham County Code Section 10-2-3 is meant to be the definition of the method of sewage disposal provided for in Section 10-6-6(B) or whether those terms are intended to be defined individually; and
4. Response from County legal counsel on the best way to proceed with the Application.

Property Owners & Applicants: Daniel and Catherin Wachs, Brian and Donna Aschliman and Jay and Lee Ann Wells

Developers: Daniel and Catherin Wachs

Property Location: Daniel and Catherin Wachs, 707 E 1550 N, Shelley, Parcel No. RP7057400, Jay and Lee Ann Wells, 705 E 1550 N, Shelley, Parcel No RP7057510, Brian and Donna Aschilman, 709 E 1550 N, Shelley, Parcel No RP7057300. Township 1N, Range 37E, Section 17

Applicable Regulations: Bingham County Comprehensive Plan, Dated November 20, 2018  
Bingham County Zoning Ordinance 2012-08

**I. MEETING INFORMATION AND TESTIMONY RECEIVED  
PRIOR TO THE REMAND PUBLIC HEARING**

1. The following was reviewed by the Commission:
  - a. Planning & Zoning Commission 8/10/2022 Public Hearing Staff Report with attachments (Exhibit S-1)
  - b. Planning & Zoning Commission Reason and Decision (Exhibit S-19)
  - c. Planning & Zoning Commission Minutes (Exhibit S-20)
  - d. Audio of the 8/10/2022 Public Hearing
  - e. Board of County Commissioners 11/1/2022 Meeting Staff Report with attachments (Exhibit CC-1)
  - f. Board of County Commissioners Reason & Decision (Exhibit CC-4)
  - g. Board of County Commissioners Minutes (Exhibit CC-5)
  - h. Audio of the 11/1/2022 Meeting

2. Governmental Agencies who provided comments were:

(RT-1) Tanna Beal, Bingham County Treasurers Office, stated taxes for 2022 will need to be prepaid prior to the Treasurer signing the plat, if approved. Comments: This supplemental testimony is not relevant to the Additional Fact Finding request.

(RT-2) Jeff Gardner, Bingham County Chief Deputy Sheriff, had no comments pertaining to the Remand.

(RT-3) Ken Keller, Environmental Health Director with Southeast Idaho Public Health Department (SIPH), provided a response as requested on Remand items 2 and 3.

(RT-4) Dusty Whited, Bingham County Public Works, stated 1550 N Woodville Road is a Major Collector, the speed limit is posted at 35 mph, and the required spacing in the Woodville Townsite is 20 feet. Comments: This supplemental testimony is not relevant to the Additional Fact Finding request.

(RT-5) Gwen Inskeep, Bingham County Surveyor, had no comments or concerns.

(RT-6) Paul Rogers, Bingham County Prosecuting Attorney, provided a response, as requested, regarding the best way to proceed with the Application.

(RT-7) Allan Johnson, Engineering Manager with Idaho Department of Environmental Quality (IDEQ), reiterated Best Management Practices and long-term storm water management to prevent runoff to the Snake River be implemented. Additionally, Mr. Johnson stated the Applicant should contact SIPH to ensure the septic system setback distances and design size is

appropriate, obtain permits, and obtain easements and/or other legal agreements regarding ownership and maintenance responsibilities for the shared system.

(RT-8) Woodville Canal Company, who stated their canal company has no issues as they will be a part of the Woodville Townsite water.

(RT-9) Ken Keller, Environmental Health Director with Southeast Idaho Public Health Department (SIPH), provided a supplemental response regarding the Subdivision Land Development Application. Mr. Keller stated on January 5<sup>th</sup>, he received the Basalt Bar Estates Subdivision Land Development Application and expects to complete a site visit next week. Additionally, it appears there is adequate room available for replacement drain fields and pending a Subdivision Evaluation Report, the Permit will likely be approved. Mr. Keller included a Property Access and Use Easements Guideline Manual to aid in establishing legal easements to protect current and future property owners for the shared system.

3. Testimony received prior to the Public Hearing.

(RA-1) Mr. Wachs, Supplemental Narrative with a response addressing each of the Fact-Finding items requested by the Board of County Commissioners.

(RA-2) Mr. Wachs, provided an updated Site Plan Map and stated he is in the process of preparing for the first Planning & Zoning meeting, he inadvertently skipped a step and applied for (and received) an incorrect Septic Permit for a residential application and not for a Subdivision. Mr. Wachs provided a checklist of items he has completed and will complete related to the Subdivision Septic Permit with an Engineer's approval of an evaluation report and on-site inspection from Public Health, as pending. Overall, Mr. Wachs requests a recommendation of approval for the proposal and conveyance of the remand testimony to the Board of County Commissioners, with the condition that the Subdivision be approved by Southeastern Idaho Public Health with a community septic system, as proposed.

## II. INFORMATION RECEIVED PERTAINING TO THE REQUEST FOR ADDITIONAL FACT FINDING

1. The community septic system that is proposed on Lots 2 and 3.

For the Remand Public Hearing, Mr. Wachs provided a supplemental updated Site Plan with supplemental testimony depicting two separate and independent septic



tanks, connected to a distribution tank that will feed to a shared drain field (on Lot 3 (closest to the river) with a replacement drain field shared between Lots 2 and 3.)

2. **Idaho Public Health Department's position on the community septic system that is proposed on Lots 2 and 3.**

Mr. Ken Keller, Environmental Health Director with SIPH, provided testimony dated December 22, 2022 (Exhibit RT-3). Mr. Keller stated:

*As of the date of the letter on December 22, 2022, SIPH had not yet received a land development application from the developer of Basalt Bar Estates Subdivision. SIPH has not conducted an onsite evaluation as part of our land development review process. The review process must be completed prior to any final comments. The letter included a number of comments pertaining to setbacks, connections, drain field and replacement drain field requirements, and additional evaluations of the land that would be required with a Subdivision Land Development Application.*

*Mr. Keller provided supplemental testimony on January 11, 2023 (Exhibit RT-9) indicating the Subdivision Land Development Application process had commenced and is expected to be compliant with Public Health's rules and regulations, as the process continues to be completed by the Applicant.*

3. **Discussion to determine whether the definition of Community Sewage Disposal System contained in Bingham County Code Section 10-2-3 is meant to be the definition of the method of sewage disposal provided for in Section 10-6-6(B) or whether those terms are intended to be defined individually.**

10-2-3: DEFINITIONS, Community Sewage Disposal System. A system where more than two (2) homes are connected to a common waste disposal system designed to accommodate connection to a Municipal collection and treatment system when reasonably available.

10-6-6: AREA REGULATIONS. Area requirements vary between zones, and the following minimum size requirements shall apply:

B. Platted subdivisions shall require the following minimum lot sizes:

1. R Zone: One-half (1/2) acre with well or septic coupled with an appropriate shared community water or septic system.
2. R Zone: One-fourth (1/4) acre with both community well and community septic system.

Public Health responded to this item stating the proposed Plat does not meet the definition of a Community Sewage Disposal System based on the definition. Planning Staff concurred with this position.

Public Health had no comment on the definition of Area Regulations.

4. **Response from County legal counsel on the best way to proceed with the Application.** County Prosecutor, Paul Rogers, provided the following information in a Memorandum (Exhibit RT-6) dated January 4, 2023 regarding the issues with contradicting Ordinance:

- Bingham County Ordinance defines “community sewage disposal system” but at no time does the Code use the term “community sewage disposal system.” It is not clear as to why Bingham County would have defined the term when it is unused, although this example is one of many.
- Secondly, the terms “shared community water system” and “shared community septic system” are used but not defined.
- The question the Board of Commissioners posed is “Does the definition of a “shared community water system” mean the same as a “disposal system.”
- In his response, he stated “it is obvious that shared community water system and shared community septic system are two different types of systems as the Ordinance separates the two, inadvertently thereby distinguishing them.”
- The term should not be “community system” the correct terms to be used and applied are “community well or water system” and a “community septic system.”
- In Rogers opinion, given the actual language of the community sewage disposal system definition, it appears to be more closely related to the Solid Waste Chapter definitions, found in Chapter 3, defining solid waste, solid waste disposal, and waste disposal site.

Ultimately, Prosecutor Rogers Memo urged the Commission to discuss and decide the following:

1. Does the septic system proposed on this Application fit within our idea of a community septic system?
  - a. If so, why?
  - b. If not, what is it about the system that does not make it fit within a community umbrella?

### **III. PLANNING & ZONING REMAND PUBLIC HEARING TESTIMONY**

1. Testimony presented at the Remand Public Hearing was as follows:

(RT-10) Applicant, Dan Wachs, 707 E 1550 N, Shelley, Idaho, stated he agreed with the additional requests and appreciates what has been asked to clear up the Ordinances. However, he expressed his struggle in that the EPA definitions of the septic system designs allow for separate systems, separate tanks, or a single septic tank. He included samples of these designs in his Supplemental Narrative. Mr. Wachs explained he has been working with Mr. Ken Keller, at Southeastern Idaho Public Health, to complete



the correct Septic Permit Application for a Subdivision rather than a Residential Permit. Mr. Wachs explained he is pretty close to completing the Application and on-site inspections and that the Professional Engineer is currently reviewing the package. Once the Engineer approves, the package will be provided to Mr. Keller. The area is staked out and a site visit is expected to take place in the next week or so. Mr. Wachs summarized Mr. Keller's comment in that as long as the adequate requirements and spacing is met for the site, SIPH does not expect there to be any issues with this community proposal. Mr. Wachs expressed that he believes the Application is in pretty good shape and it's just a matter of checking the boxes at this point. He thought it was also worth noting that he cannot move forward with the Subdivision platting without the required signatures on the Final Plat, as SIPH has a signature on the Final Plat approving the same.

Commissioner Aullman requested that the Applicant provide a brief description of the legal arrangements to make sure that maintenance of the system will always happen, even if the property changes hands. Mr. Wachs responded that he thinks that it is an important note and plans to make the necessary legal arrangements. Mr. Keller provided a document that outlines the Property Access and Use Requirements and the Easements for Septic Systems and Commissioner Aullman encouraged Mr. Wachs to review and incorporate it into the Conditions, Covenants and Restrictions.

Commissioner Aullman next asked for clarification regarding maintenance and if there is a problem, how the properties owners are going to work that out. Mr. Wachs explained that would be controlled by the Home Owners Association "HOA", per the Planning & Zoning Commission's condition back in August; the expectation is the system will be pumped at the proper time and if the system were to fail, with the drainfield being the primarily focus, easements would be in place for the backup drainfield and installation costs would be shared.

Chairman Leavitt clarified with Director Olsen on the best way to proceed in regards to No. 4 "Response from Legal Counsel." Director Olsen explained that Prosecutor Rogers was seeking the Planning & Zoning Commission to determine their understanding of Bingham County Code and the lack of a definition of a "community septic system." Also, Prosecutor Rogers' Memorandum questions if the community septic system being proposed aligns with the Planning & Zoning Commissions understanding of what a "community" component is. Further, does that "community" component include one septic system for two residences or does it include two septic systems with a distribution box sharing one drainfield and replacement area. In summary, what would the Commission like to see to further define Bingham County Code within that "community" component. Director Olsen summarized with the current Code and information provided, as long as the "community system" is permitted by Public Health and shares design components, perhaps that is sufficient.

No testimony in support, in neutral, nor in opposition was received at the Public Hearing.

4. After the Applicant's testimony, the Remand Public Hearing was closed for this item.

#### **IV. COMMISSIONERS DISCUSSION**

Chairman Leavitt confirmed the Commission had received the necessary information for item numbers 1, 2 and 3. In regards to item no. 4 and Prosecutor Rogers comments, Chairman Leavitt offered on the terms of the community septic system definition, perhaps the County should rely on the professionals that understand what it takes to put a sewer system in the ground and what configurations are acceptable. It was his opinion that said professionals (i.e., SIPH) are okay issuing a Septic Permit with the shared components in the Applicants design, and thereby calling it a community septic system. Chairman Leavitt and Commissioner Aullman concurred in including "if permitted by the appropriate regulatory agency" would be best in the definition of a "community septic system" contained in a Bingham County Code amendment. Commissioner Aullman expressed that he thought a big part of determining viability of a system and its components (whether shared or not) is that Idaho Public Health Department is willing to permit said configuration. Chairman Leavitt reiterated that Idaho Public Health Department's signature is required on every Final Plat for that specific reason.

Director Olsen clarified that a community disposal system is different than a community septic system because the disposal system is treated off site by a district (or municipal) system by definition, and the community septic system (waste staying on site) can be designed in a number of variations with shared components in some capacity (because Bingham County Code does not define what can or cannot be shared). Additionally, she understood the Commissions discussion and direction to the Board of County Commissioners to be transmission of the record and additional testimony, to indicate that as long as SIPH will issue a Septic permit based upon the proposed shared configuration, then the Commission feels comfortable relying on that approval process when a community septic system is proposed. Director Olsen noted a community septic system should also provide appropriate legal easements and maintenance documents to be recorded with the Subdivision and indicated on the Final Plat with the specific recording number to ensure all future lot owners are aware of the condition. The Commission agreed. Director Olsen informed the Commission that those items will be language she intends to carry over into future ordinance modifications to provide further clarification.

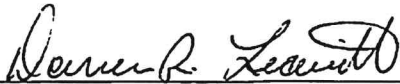
#### **V. REASON AND DECISION**

The Planning & Zoning Commission found the additional information sought by the Board of County Commissioners was obtained. Giving consideration to the new evidence and testimony, Commissioner Aullman motioned to return the Basalt Bar Estates Subdivision Application to the Board of County Commissioners, transmit the record and additional fact finding for the 4 items requested in the Remand, and add that if Southeastern Idaho Public Health (SIPH) approves the Subdivision's Septic Permit, as proposed in the current configuration, and there are legal agreements addressing easements and maintenance for the shared system, recorded with the Clerk's Office as well as noted on the Final Plat to manage the community septic system, he continues to recommend approval of the Application, with the propose shared community septic system.




Commissioner Carroll seconded the motion. Commissioners Aullman, Carroll, Croft, Johns and Sellers voted in favor. The Motion carried.

*Director Olsen explained to the Commission that Staff will require written verification IDPH will permit the Subdivision for the proposed community shared system as part of the documentation Staff provides to the Board of County Commissioners with the Remand Decision so the Board may make a decision upon having all requested additional Fact Finding.*

  
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Darren Leavitt, Chairman  
Bingham County Planning and Zoning Commission

2/2/23  
Date

  
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Tiffany G. Olsen,  
Planning & Development Director

2/3/2023  
Date